Supreme Court, U.S.
FILED
DEC 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1722

In the Supreme Court of the United States

OCTOBER TERM, 1986

EDWARD O'LONE, ET AL., PETITIONERS

v.

ESTATE OF AHMAD UTHMAN SHABAZZ AND SADR-UD-DIN NAFIS MATEEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

CHARLES FRIED
Solicitor General

WILLIAM F. WELD
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

ROGER CLEGG
Assistant to the Solicitor General

RANGELEY WALLACE
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

42 pp

QUESTION PRESENTED

Whether prison regulations that restrict a religious practice are unconstitutional unless the prison authorities show that there is no reasonable method to accommodate the practice without creating significant security problems.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	10
Argument:	
Petitioners' policies did not violate the inmates' rights under the Free Exercise Clause	12
A. As a general rule, prisoners' First Amendment claims must yield to rules and regulations that are reasonably related to legitimate penological objectives	12
B. Prisoners' claims arising under the Free Exercise Clause should be assessed under the same standard as other First Amendment claims	17
C. Petitioners' policies are reasonably related to legitimate penological objectives	28
Conclusion	30
Appendix	1a

TABLE OF AUTHORITIES

Cases:

Abdool-Rashaad v. *Seiter*, No. 84-3816 (6th Cir. Aug. 8, 1985)	22
Abdul Wali v. *Coughlin*, 754 F.2d 1015	25
Abdullah v. *Kinnison*, 769 F.2d 345	25
Allen v. *Board of Pardons*, 792 F.2d 1404	9
Ansonia Bd. of Educ. v. *Philbrook*, No. 85-495 (Nov. 17, 1986)	24
Barrett v. *Virginia*, 689 F.2d 498	25
Bell v. *Wolfish*, 441 U.S. 520	10, 13, 14, 15, 16, 19, 21, 24
Block v. *Rutherford*, 468 U.S. 576	19, 22, 24
Boudin v. *Thomas*, 533 F. Supp. 786	26
Bounds v. *Smith*, 430 U.S. 817	15
Burgin v. *Henderson*, 536 F.2d 501	25

Cases—Continued: Page

City of Cleburne v. *Cleburne Living Center, Inc.*, No. 84-468 (July 1, 1985) 26
Cole v. *Flick*, 758 F.2d 124, cert. denied, No. 85-5317 (Oct. 21, 1985) 22
Cooper v. *Pate*, 378 U.S. 546 27
Cruz v. *Beto*, 405 U.S. 319 ..... 23, 27
Dettmer v. *Landon*, 799 F.2d 929 21
Estelle v. *Gamble*, 429 U.S. 97 15
Gallahan v. *Hollyfield*, 670 F.2d 1345 25
Goldman v. *Weinberger*, No. 84-1097 (Mar. 25, 1986) 20
Green v. *Ferrell*, 801 F.2d 765 26
Harlow v. *Fitzgerald*, 457 U.S. 800 10
Heffron v. *International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 17
Hill v. *Blackwell*, 774 F.2d 338 25
Hudson v. *Palmer*, 468 U.S. 517 ..... 15, 19, 27
Illinois Elections Board v. *Socialist Workers Party*, 440 U.S. 173 21
Johnson v. *Avery*, 393 U.S. 483 15
Jones v. *Bradley*, 590 F.2d 294 25
Jones v. *North Carolina Prisoners' Union*, 433 U.S. 119 ..... 10, 13, 14, 15, 21
Kincaid v. *Rusk*, 670 F.2d 737 26
Lane v. *Williams*, 455 U.S. 624 9
Lucas v. *Hodges*, 730 F.2d 1493 9
Madyun v. *Franzen*, 704 F.2d 954, cert. denied, 464 U.S. 996 ..... 22, 25
Mann v. *Smith*, 796 F.2d 79 26
Pell v. *Procunier*, 417 U.S. 817 ..... 10, 13, 14, 16, 19, 24, 25
Polakoff v. *Henderson*, 370 F. Supp. 690 22
Preiser v. *Rodriguez*, 411 U.S. 475 14
President & Directors of Georgetown College, Inc., In re, 331 F.2d 1000 18
Price v. *Johnston*, 334 U.S. 266 13
Prince v. *Massachusetts*, 321 U.S. 158 ..... 10, 17, 18
Procunier v. *Martinez*, 416 U.S. 396 22
Remmers v. *Brewer*, 361 F. Supp. 537, aff'd, 494 F.2d 1277, cert. denied, 419 U.S. 1012 23
Safley v. *Turner*, 777 F.2d 1307, cert. granted, No. 85-1384 (May 27, 1986) 15, 25

Cases—Continued: Page

Smith v. *Coughlin*, 748 F.2d 783 25
Smith v. *Fairman*, 678 F.2d 52 22
St. Claire v. *Cuyler*, 634 F.2d 109 25
Taylor v. *Rogers*, 781 F.2d 1047 9
Theriault v. *Carlson*, 339 F. Supp. 375, rev'd, 495 F.2d 390 23
Thorne v. *Jones*, 765 F.2d 1270, cert. denied, No. 85-1070 (Feb. 24, 1986) 25
Trans World Airlines, Inc. v. *Hardison*, 432 U.S. 63 25
United States Department of Agriculture v. *Moreno*, 413 U.S. 528 26
Valley Forge Christian College v. *Americans United*, 454 U.S. 464 17
Walker v. *Mintzes*, 771 F.2d 920 25
Weaver v. *Jago*, 675 F.2d 116 22
Williams v. *New York*, 337 U.S. 241 13
Zobel v. *Williams*, 457 U.S. 55 26
Zorach v. *Clauson*, 343 U.S. 306 27

Constitution, statutes and regulations:

U.S. Const.:
Amend. I 8, 10, 11, 12, 15, 16, 17
Free Exercise Clause 2, 10, 17, 22, 27
Amend. IV 19
Amend. VIII 11, 15, 27
Amend. XIV (Equal Protection Clause) 11, 27
Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997a(a) 2
42 U.S.C. 1983 2

Miscellaneous:

Cripe, *Religious Freedom in Prisons*, 41 Fed. Prob. 31 (1977) 22, 23
Knight, *Religion in Prison: Balancing the Free Exercise, No Establishment, and Equal Protections Clauses*, 26 J. Church & State 437 (1984) 23
Note, *Prisoners' Rights and Prison Interests: Accommodation of Religious Dietary Practices in Prison*, 27 Syracuse L. Rev. 1231 (1976) 14

In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 85-1722

EDWARD O'LONE, ET AL., PETITIONERS

v.

ESTATE OF AHMAD UTHMAN SHABAZZ AND
SADR-UD-DIN NAFIS MATEEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE UNITED STATES

This case presents the question of what constitutional standard applies to a prison policy that impinges on an inmate's free exercise of religion. The Bureau of Prisons has a strong interest in this question, as federal inmates hold a wide variety of religious beliefs and have brought a number of challenges, on free exercise grounds, to the Bureau's regulations and practices.[1] The standard this Court adopts will affect the ability of the Bureau to further its penological goals and the flexibility it will have

---

[1] The Bureau of Prisons regulations and a summary of its practices regarding inmate religious activities are attached as an appendix to this brief.

in pursuing those goals. It will also affect the extent to which prisoners can successfully sue federal officials under the Free Exercise Clause. The United States also has an interest in this case stemming from the Attorney General's responsibility under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997a(a), to ensure to state prisoners the full enjoyment of their rights, privileges, and immunities under the Constitution.

STATEMENT

1. Two inmates at the Leesburg State Prison brought this action under 42 U.S.C. 1983 in the United States District Court for the District of New Jersey. The inmates, who were members of the Islamic faith, challenged the constitutionality of a regulation and a prison policy that had the effect of preventing them from attending Jumu'ah, the Muslim weekly congregational service.

a. Leesburg is a medium security prison located on 1100 acres of land in southern New Jersey. Inmates falling into three custody classifications are housed at Leesburg. The maximum security and "gang minimum" inmates live in the main prison building. The "full minimum" inmates live in a second building, called the Farm. The classification assigned to each inmate affects that inmate's work assignment. Pet. App. 40A.

The challenged regulation, Standard 853, provides that maximum security inmates shall be assigned activities within the confines of the prison under constant supervision; "gang minimum" inmates must be assigned jobs or activities outside the prison, but within eyesight of a guard or other authorized supervisor; "full minimum" inmates must be assigned work off the prison grounds with minimal supervision. Under Standard 853, successful completion of a period of time in gang minimum was made a prerequisite for full minimum security status. Full minimium security status is a prerequisite for participation in all community release programs. Pet. App. 59A-61A.

The prison policy at issue here is reflected in a memorandum to the Leesburg population from the prison administrator on March 7, 1984. The policy set forth in the memorandum prohibited inmates assigned to outside work details from returning to the prison during the day, except in case of emergency. Pet. App. 42A-43A.

The effect of the regulation and the policy was to prevent Muslims assigned to outside work details from returning to the prison for Jumu'ah. Jumu'ah is the only Muslim congregational service of the week, and must be held on Friday after the sun reaches its apex and before the mid-afternoon individual prayer. The obligation to attend Jumu'ah is commanded by the Qur'an, and it is a central practice of the Muslim faith. Pet. App. 43A.

b. At the hearing on the plaintiffs' request for an injunction, the prison officials testified about the purposes of the challenged regulation and policy.[2] They also explained why accommodating the plaintiffs' desire to attend Jumu'ah would jeopardize security and rehabilitation, and they detailed the steps taken by the Leesburg prison administrators in other areas to accommodate the religious demands of Muslim inmates.

Standard 853 was primarily a response to the serious overcrowding problem at Leesburg. Designed to house 504 inmates, the main prison currently houses 704. The Farm, which originally was designed for 175 inmates, currently houses 500. Tr. 66-67, 157-158. The outside work details required by Standard 853 for gang minimum and full minimum inmates were intended to relieve the tension and the drain on resources at the main prison and the Farm (Tr. 157). With most gang minimum and full minimum inmates outside working all day, there was less demand on the dining hall, gymnasium, and other facili-

---

[2] Edward O'Lone, the Leesburg Superintendent, and James Ucci, the Chief Deputy at Leesburg, testified at the hearing. Chief Ucci has 22 years of experience in corrections (Tr. 49), and Superintendent O'Lone more than 16 years (Tr. 149-150).

ties, as well as a reduction in the tension between inmates that results from overcrowding (*ibid.*).

The requirement that all inmates serve in the gang minimum classification before service in the full minimum class yielded other important benefits to the security of the institution and the rehabilitation of the inmates. Before the new regulation, prisoners would be transferred from maximum security classification directly to full minimum (Tr. 167). Many inmates were unable to adjust to the abrupt transition in custody classification (Tr. 168). Standard 853 required a reasonable period of transition; by gradually giving the inmates more freedom and responsibility, the transition period provided an opportunity for the inmates to learn how to function in free society and reduced the number of escapes (*ibid.*).[3]

As the prison's outside work program developed and expanded, problems developed. Many of the inmates assigned to a work detail would not actually work a full day (Tr. 158). Inmates avoided work by scheduling doctor and social worker appointments, interviews with staff members, or important telephone calls. And on Fridays, inmates were excused to attend Jumu'ah. Tr. 50, 70-71, 158. Sometimes less than half the inmates assigned to work details would actually leave the prison on a particular day, "because they had a million reasons why they couldn't go out" (Tr. 158).

Security problems emerged in the wake of the new work program Any time an inmate returned to the facility during the day, the guards stationed at the main gate were responsible for processing the prisoner (Tr.

[3] The outside work program is not a form of "make work." It produces baked goods for 28 state institutions, the meals for Leesburg's own inmates, license plates for the entire State, dairy and pork products, clothing for state institutions, and lumber. The inmates farm the Leesburg farm, landscape and maintain the grounds at Leesburg and other institutions, clean the highway, perform laundry services at Ancora Psychiatric Hospital, and work in various environmental clean-up projects. Tr. 150-153, 156, 158, 161-162.

50-51, 61). They had to compare the inmate's appearance with his mugshot, register the inmate's return, and perform a strip search of the inmate (Tr. 51). The larger the number of inmates who returned from their work details, the more burdensome the demands on the guards' time and attention. Trucks passing through the main gate frequently were held up for long periods of time because of the returning prisoners, resulting in a disruption of the flow of goods and services into the prison (Tr. 86-87). In addition, at the time of Jumu'ah, there is a mass movement of prisoners for lunch; the return of prisoners from outside at that time of day therefore increased the risk of escapes (Pet. App. 28A, 28A-31A n.3).

Allowing an inmate to return to the prison during the day interfered with the work of the entire work detail. Each gang minimum detail was accompanied by only one guard. Therefore, if any member of a gang minimum detail returned to the prison, all the members of the detail had to walk back to the prison together (Tr. 52). Leesburg does not have sufficient staff to send two guards out with each detail, or to send a guard from the prison to retrieve a returning prisoner (Tr. 52-53). Thus, if one inmate returned to Leesburg, none of the other members of his detail would work.[4]

Finally, allowing midday returns produced tension at Leesburg in several other respects as well. First, many inmates who returned from work details did not actually go to their alleged appointments or religious services,

[4] The walk back to the prison could spoil much of the work day, since work details frequently were stationed at some distance from the prison. To get one prisoner from the institution back in time for Jumu'ah, the entire detail would have to start walking back early enough for the prisoner to arrive at the prison before the 11:30 a.m. inmate count (Tr. 83-84). Full minimum inmates working in the vicinity of the Farm were permitted to return for Jumu'ah unescorted; full minimum inmates working at great distances from the Farm were not permitted to return (Tr. 69; see Tr. 118-119).

which resulted in disciplinary problems (Tr. 72, 181). Second, when returns were allowed, inmates constantly badgered the guards accompanying the work details to allow them to return early (Tr. 161). Finally, some guards allowed returns while others did not, which added to the tension between inmates and prison officials (Tr. 175-176).

As the problems with the outside work program grew, the Leesburg administrators and staff realized something had to be done. Chief Ucci and Superintendent O'Lone discussed the chaotic return policy with staff members, including the director of social services and the director of professional services, and with the prison's imam and the chaplain. Chief Ucci even consulted Muslim religious references. Tr. 68, 90-91, 175.

After studying the matter, the administrators concluded that a policy banning returns would not unduly interfere with the inmates' practice of the Muslim religion (Tr. 90-91, 184). They therefore instituted the policy banning midday returns from work details. The evidence before the district court showed that the new policy has been effective in terms of inmate productivity, rehabilitation, and security at the gates. Tr. 88-90, 160-161, 168.

There was also considerable testimony on the absence of effective alternatives to the challenged policies. The prison officials testified that it would be contrary to the interests of prison security and the inmates' rehabilitation to create a special Muslim work detail that worked, for example, Monday through Thursday and Saturday or Sunday, or that was assigned to work inside the prison on Fridays. Putting individuals with a particular affinity interest together, the superintendent testified, almost invariably leads to the creation of an informal organization that challenges the institution's authorities and produces confrontation. Tr. 179-182. Creating special details to work on Saturday or Sunday also would require a total reorganization of the operating structure of the

prison: it would impose a hardship on the guards, most of whom traditionally work Monday through Friday (Tr. 179), and it would disrupt the prison's practice of reserving weekends for visits and recreational activities (Tr. 190). Moreover, work details inside the main building—in the kitchen, bakery, and tailor shop—are reserved for maximum security inmates for whom an outside job might be a problem, so it would not be practicable to assign all Muslim inmates to inside work (Tr. 68; see Pet. App. 48A-49A). Finally, the prison administrators testified that allowing the Muslim gang minimum inmates to sit in the prison waiting for the service on Fridays was not a reasonable solution, because it would restrict the areas available for maximum security inmates and would create the impression that Muslims are given favored treatment (Tr. 176-179).[5]

Although attendance at the Friday service is impossible for some of the inmates under the "no return" policy, Leesburg prison has made numerous other significant accommodations for Muslim inmates. The Imam, a paid employee of the State, may visit the prison at any time and usually comes to Leesburg two evenings a week to meet with the congregation (Tr. 92, 94). Outside work hours, Muslim inmates' opportunities for discussion, prayer, and religious services are "virtually unlimited except during working hours," as long as the Imam is there to conduct the service (Tr. 182-183). During Ramadan, a month-long Muslim celebration, correction officials wake the Muslims daily, at their request, for a 4:00 a.m. breakfast and prayer service in the prison cafeteria; the dining hall remains open for services and dinner at 8:20 p.m. (Tr. 92, 94-95). At all other times, Muslims are served an alternate meal when the scheduled meal includes food they are not permitted to eat (Tr. 93).

---

[5] The problem, the officials testified, is compounded by the fact that it is difficult to distinguish "the conscientious from the nonconscientious" (Tr. 178, 181).

2. The district court held that petitioners had not violated the plaintiffs' First Amendment rights (Pet. App. 39A-55A). The court found that Standard 853 and the March 7 policy "plausibly advance[d]" the goals of security, order, and rehabilitation, and thus survived the plaintiffs' constitutional challenge (*id.* at 52A). The court rejected the alternative proposals suggested by the prisoners to accommodate their Friday worship service, concluding that "no less restrictive alternative could be adopted without potentially compromising a legitimate institutional objective" (*id.* at 54A). It found that "proposals having the effect of potentially concentrating all Muslim inmates in one or two inside details" could properly be rejected as dangerous to order and security (*id.* at 53A). Proposals having the effect of displacing more dangerous inmates from inside jobs could be rejected on the same grounds (*ibid.*). And proposals for weekend work as a substitute for Friday labor could "properly be rejected as potential dangers to security insofar as such proposals would necessitate the diversion of manpower from other programs requiring supervision" (*id.* at 53A-54A). The court further concluded that allowing the inmates to return from work, either escorted or not, was properly rejected on rehabilitative and security grounds (*id.* at 54A). Finally, the court found that all the proposals shared the drawback that they might be viewed as showing favoritism to one group and thus could compromise security and rehabilitation (*ibid.*).[6]

3. The court of appeals, sitting en banc, vacated the district court's judgment and remanded the case for further proceedings in light of the standard set forth in the court's opinion (Pet. App. 57A-58A). The court of appeals concluded that prison officials should be required "to produce convincing evidence that they are unable to satisfy their institutional goals in any way that does not infringe the inmates' free exercise rights" or to show

[6] The district court also rejected the plaintiffs' equal protection claim, on the ground that the evidence showed that generally Muslims had "opportunities [to practice their religion] similar to those of everyone else" (Pet. App. 54A-55A).

that "security problems occurred or are likely to arise because of the religious practice at issue" (*id.* at 8A). Accordingly, the court of appeals held that on remand the State would be required to demonstrate "that the challenged regulations were intended to serve, and do serve, the important penological goal of security, and that no reasonable method exists by which [the inmates'] religious rights can be accommodated without creating bona fide security problems" (*id.* at 9A). Although finding that the expert testimony of prison officials "should be given due weight," the court held that the testimony was not "dispositive of the issue whether no reasonable adjustment is possible" (*id.* at 10A).

The dissenting judges contended that the standard adopted by the majority was inconsistent with this Court's precedents requiring deference to prison officials' decisions "unless the evidence indicates that officials had greatly exaggerated their response to prison conditions" (Pet. App. 15A). The dissenters concluded that the majority had minimized the problems the Leesburg administrators faced in allowing inmates to return for Jumu'ah. Those problems, the dissenters noted, come "not from the service but from the allocation of resources required to * * * regulate the passage of people for that purpose," as well as the "serious rehabilitative and security concerns" raised by the differential treatment of Muslims (*id.* at 24A-25A).[7]

[7] At the time this suit was filed in 1984, plaintiffs Shabazz and Mateen were inmates. On July 17, 1985, Mateen was paroled, and on January 15, 1986, shortly before the court of appeals issued its en banc decision, Shabazz died. Pet. 2 n.1; Br. in Opp. 3 n.1. Thus, neither of the original plaintiffs is subject to the prison regulations challenged here. The parole of Mateen and the death of Shabazz render moot the claims for injunctive relief. See *Lane* v. *Williams*, 455 U.S. 624, 632 n.13 (1982); *Allen* v. *Board of Pardons*, 792 F.2d 1404, 1408 n.2 (9th Cir. 1986); *Taylor* v. *Rogers*, 781 F.2d 1047, 1048-1049 n.1 (4th Cir. 1986); *Lucas* v. *Hodges*, 730 F.2d 1493, 1497 & n.10 (D.C. Cir. 1984). While the claims for damages are sufficient to keep this case from becoming entirely moot, it seems clear that the damages claims will be barred, regard-

SUMMARY OF ARGUMENT

A. This court has already made clear the general principles that should guide the courts in their resolution of inmates' First Amendment challenges to prison rules and regulations. It has recognized that "[t]he fact of confinement and the needs of the penal institution impose limitations on constitutional rights, including those derived from the First Amendment, which are implicit in incarceration." *Jones* v. *North Carolina Prisoners' Union*, 433 U.S. 119, 125 (1977). It has also recognized that "wide-ranging deference" must be accorded the decisions of prison administrators in their pursuit of legitimate penological goals (*id.* at 126). Those goals include the internal security of the prison, rehabilitation, the deterrence of crime, and protecting society by quarantining criminal offenders. *Pell* v. *Procunier*, 417 U.S. 817, 822-823 (1974). This Court's application of these principles in *Prisoners' Union*, *Pell*, and *Bell* v. *Wolfish*, 441 U.S. 520 (1979), makes clear that, as a general matter, First Amendment challenges to prison regulations will be rejected if the regulations are reasonably related to a legitimate penological interest.

B. The question in the present case is whether this standard should be applied as well to First Amendment claims under the Free Exercise Clause. We believe that it should be. As an initial matter, of course, "it may be doubted that any of the great liberties insured by the First Article can be given a higher place than the others." *Prince* v. *Massachusetts*, 321 U.S. 158, 164 (1944). Nonetheless, we recognize that religious practice is special in certain ways: it is typically more personal

---

less of the outcome of the proceedings in this Court, by the defense of qualified immunity: since petitioners won in the district court and lost only when the Third Circuit rejected its previous standard, it is inconceivable that petitioners could be found to have violated "clearly established * * * constitutional rights of which a reasonable person would have known." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982).

and private than other First Amendment practices, and its denial may have more serious consequences to the claimant. In addition, it is ordinarily regarded as a matter of duty, rather than one of preference. But the correlation is not exact: religious practices may often lack these qualities, and other First Amendment rights may sometimes have them. And it is indisputable that religious practices can raise the same threats to order, rehabilitation, and other legitimate penological interests as can other First Amendment activities.

Allowing free exercise challenges to prison policies that are reasonably related to a legitimate penological interest will create the same problems this Court has warned against in the context of other constitutional claims, and it would present additional problems as well. The fact that it is a free exercise challenge that is presented, rather than another constitutional claim, does not diminish the prison's interest, does not render judges more expert or prison officials less so, and does not lessen the prudential need to allow prison officials to run their institutions with minimal intrusion from the courts. A lesser standard for free exercise claims would likely result in prisoners' demands being couched in religious terms, and a consequent increase in the burden of such claims on the courts.

The reasonable relationship standard does not exclude consideration of factors unique to the practice of religion, nor is it a standard without teeth. An inmate may prevail if the prison officials fail to show that the policy in issue reasonably serves a legitimate penological interest. Prisoners have from time to time prevailed under this standard in those circuits that have adopted it, and this Court has shown in its equal protection cases that the standard has meaning. Moreover, religious practice enjoys additional protection under the Equal Protection Clause and the Eighth Amendment. Finally, prison officials are likely to *want* to accommodate religious practices to the extent they can, since the practice of religion

often furthers security and rehabilitative objectives. Officials will have no desire to provoke needless confrontations by denying emotionally felt needs and deeply held beliefs unless they have good reason to do so, or unless they determine that the asserted needs and beliefs are not genuine.

C. The prison policies challenged here were reasonably related to legitimate penological interests. The midday return of inmates from the work details was proving to be a serious problem for the prison administrators; there is no evidence that the policies were an "exaggerated response" to that problem; and the record reflects a genuine effort on the part of the state officials to accommodate to the extent they could the religious practices of the prison inmates.

ARGUMENT

PETITIONERS' POLICIES DID NOT VIOLATE THE INMATES' RIGHTS UNDER THE FREE EXERCISE CLAUSE

A. As A General Rule, Prisoners' First Amendment Claims Must Yield To Rules And Regulations That Are Reasonably Related To Legitimate Penological Objectives

This Court's method of analyzing prisoners' First Amendment claims is well settled. The Court has refused to subject prison policies to strict scrutiny, even when the policies have impinged on First Amendment rights. Instead, the Court has assessed whether the policy at issue is reasonably related to legitimate penological interests, and it has sustained the policy absent evidence that it is an irrational or exaggerated response to those interests.

1. This Court's approach to inmates' constitutional complaints derives from two related principles. The first is that the fact of confinement and the necessities of ad-

ministering a prison impose limitations on constitutional rights. *Price* v. *Johnston*, 334 U.S. 266, 285 (1948). The Court has recognized that "[t]he fact of confinement and the needs of the penal institution impose limitations on constitutional rights, including those derived from the First Amendment, which are implicit in incarceration." *Jones* v. *North Carolina Prisoners' Union*, 433 U.S. 119, 125 (1977). Thus, "an inmate does not retain those First Amendment rights that are 'inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system' " (*id.* at 129, citing *Pell* v. *Procunier*, 417 U.S. 817, 822 (1974)). Constitutional challenges to prison restrictions therefore "must be analyzed in terms of the legitimate policies and goals of the corrections system" (*Pell* v. *Procunier*, 417 U.S. at 822).

The paramount concern in running a prison is institutional security. "[M]aintaining institutional security and preserving internal order and discipline are essential goals," and "[p]rison officials must be free to take appropriate action to ensure the safety of inmates and corrections personnel and to prevent escape or unauthorized entry." *Bell* v. *Wolfish*, 441 U.S. 520, 546-547 (1979).[8] Other legitimate penological interests have also been recognized by this Court, including deterrence and rehabilitation. *Pell* v. *Procunier*, 417 U.S. at 822-823; see also *Williams* v. *New York*, 337 U.S. 241, 248-249 & n.13 (1949). In addition, the proper allocation of administrative and fiscal resources is a legitimate concern of prison administrators; a man-hour or dollar spent on accommodating a prisoner's demand or complying with a court's directive necessarily diminishes what can be spent to achieve other goals such as security and rehabilita-

---

[8] In the federal system alone, between 1983 and 1986, there were 39 inmate homicides, 1384 inmate assaults on other inmates, and 780 inmate assaults on prison staff members.

tion.[9] Thus, in the unique environment of the prison, where the inmates' regimen is totally controlled,[10] the presumptions applicable to free society are reversed, and the burden of challenging an official practice that interferes with an asserted right must be borne by the inmate.

The second important principle recognized by the Court is that "wide-ranging deference" must be accorded to the decisions of prison administrators in their pursuit of legitimate penological goals. *Prisoners' Union*, 433 U.S. at 126. That deference is based on the "realities of running a penal institution" (*ibid.*), a function that is "peculiarly within the province and professional expertise of corrections officials" (*Pell* v. *Procunier*, 417 U.S. at 827). Judicial deference is accorded "not merely because the administrator ordinarily will, as a matter of fact in a particular case, have a better grasp of his domain than the reviewing judge, but also because the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial" (*Bell* v. *Wolfish*, 441 U.S. at 548). As the Court explained in *Procunier* v. *Martinez*, 416 U.S. 396, 405 (1974), "courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism."

---

[9] See generally Note, *Prisoners' Rights and Prison Interests: Accommodation of Religious Dietary Practices in Prison*, 27 Syracuse L. Rev. 1231, 1245-1248 (1976). We do not understand the court of appeals to dispute the legitimacy of non-security goals (see Pet. App. 9A-10A nn.2 & 3), although we share the dissent's puzzlement that the majority found no evidence that those goals were implicated in this case. See *id.* at 23A-24A, 32A-34A; Tr. 159-160.

[10] See, *e.g.*, *Preiser* v. *Rodriguez*, 411 U.S. 475, 492 (1973) ("The relationship of state prisoners and the state officers who supervise their confinement is far more intimate than that of a State and a private citizen. For state prisoners, eating, sleeping, dressing, washing, working, and playing are all done under the watchful eye of the State.").

2. Applying these principles, the Court in cases involving First Amendment claims by inmates has rejected the strict scrutiny typically employed in noninmate cases, and has adopted instead a standard that emphasizes the unique nature of the prison environment and the expertise of the prison administrators.[11]

In *Jones* v. *North Carolina Prisoners' Union*, *supra*, the Court rejected a standard similar to that adopted by the court of appeals in this case. The Court in *Prisoners' Union* upheld against First Amendment free speech and association challenges a prison's prohibition of union meetings, membership solicitation, and bulk mailing of union publications to inmates for distribution within the prison. The state correctional officials had testified that the concept of a prisoner labor union was fraught with potential dangers. This Court held that the burden was not on the prison officials to show affirmatively that the union would be detrimental to proper penological objectives or would constitute a "present danger to security and order" (*id.* at 128). Rather, in the absence of substantial evidence that the prison officials' response was exaggerated or irrational, the Court stated that "[t]he necessary and correct result of our deference to the informed discretion of prison administrators permits them,

---

[11] As we discussed in our brief (at 14 n.9) in *Turner* v. *Safley*, cert. granted, No. 85-1384 (May 27, 1986), certain rights enjoyed by prisoners must logically survive the fact of conviction and incarceration. See, *e.g.*, *Estelle* v. *Gamble*, 429 U.S. 97 (1976) (Eighth Amendment); *Bounds* v. *Smith*, 430 U.S. 817 (1977) (access to the courts); *Johnson* v. *Avery*, 393 U.S. 483 (1969) (same). On the other hand, certain rights are per se inconsistent with a prisoner's status. See *Hudson* v. *Palmer*, 468 U.S. 517, 530 (1984) ("prisoners have no legitimate expectation of privacy and * * * the Fourth Amendment's prohibition on unreasonable searches does not apply in prison cells"). First Amendment rights, discussed in the text, fall somewhere in between—their scope is diminished by imprisonment, but not eliminated. See also *Bell* v. *Wolfish*, 441 U.S. at 554 ("due process rights of prisoners * * * are not absolute; they are subject to reasonable limitation or retraction in light of the legitimate security concerns of the institution").

and not the courts, to make the difficult judgments concerning institutional operations" (*ibid.*). Associational rights may be curtailed, the Court held, "whenever the institution's officials, in the exercise of their informed discretion, reasonably conclude that such associations * * * possess the likelihood of disruption to prison order or stability, or otherwise interfere with the legitimate penological objectives of the prison environment" (*id.* at 132). In reviewing the prison officials' determination on that score, the Court stated that "[i]t is enough to say that they have not been conclusively shown to be wrong" (*ibid.*).

In *Pell* v. *Procunier*, *supra*, the Court upheld against First Amendment challenge a prison regulation prohibiting press and other media face-to-face interviews with specific prisoners. State correctional officials had concluded that limiting the visits would promote prison security; the Court held that "[s]uch considerations are peculiarly within the province and professional expertise of corrections officials" (417 U.S. at 827). Thus, "in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters" (*ibid.*).[12]

Finally, in *Bell* v. *Wolfish*, *supra*, the Court reviewed a First Amendment challenge to a Bureau of Prisons rule restricting inmates' receipt of hardback books unless mailed directly from publishers, book clubs, or bookstores. The Court concluded that the rule was a "rational response" to "an obvious security problem" (441 U.S. at 550). Because there was "no evidence" that officials had exaggerated their response to the security

[12] In *Pell*, the Court found it "relevant" to the reasonableness of the restriction that prisoners had other means of communicating with members of the general public (417 U.S. at 823-824). In this case, by analogy, the Muslim inmates were permitted to practice their religion in other ways; the prison policy at issue here affected only their ability to attend Jumu'ah.

problem, the Court held that "the considered judgment of these experts must control in the absence of prohibitions far more sweeping than those involved here" (*id.* at 551).

These three decisions make it clear that, as a general matter, courts must uphold prison policies against First Amendment challenges by inmates as long as the policies are reasonably related to a legitimate penological interest. The remaining question is whether inmate claims arising under the Free Exercise Clause should be judged by a different, less deferential standard than claims arising under other provisions of the First Amendment.

B. Prisoners' Claims Arising Under The Free Exercise Clause Should Be Assessed Under The Same Standard As Other First Amendment Claims

1. We submit that free exercise claims should be evaluated under the same standard as other First Amendment claims. This Court has expressed doubt "that any of the great liberties insured by the First Article can be given a higher place than the others." *Prince* v. *Massachusetts*, 321 U.S. 158, 164 (1944). See also *Valley Forge Christian College* v. *Americans United*, 454 U.S. 464, 484 (1982) ("no principled basis on which to create a hierarchy of constitutional values"); *Heffron* v. *International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 652-653 (1981); *id.* at 659 n.3 (opinion of Brennan, J.). If free exercise claims are to be given special treatment in the prison context, it must be because the right is unique when the claims are made by prisoners.

2. We recognize that religious freedom is special in certain ways. It can be a highly personal and private right. Prayer and religious study, for instance, implicate no third party in the sense that associational and speech rights do. The practice of religion is also different from other rights in that its infringement may have more serious consequences to the claimant than the de-

nial of other rights: spiritual death is an injury different in kind as well as in degree from the censorship of mail. Finally, while other constitutional rights are typically exercised as a matter of volition and preference, religion is often viewed as a matter of personal duty.

Yet none of the characteristics of religion is absolute or unique. Sometimes the exercise of religious freedom will necessarily involve more than one person—as it does here, where the inmates wish to attend congregational services. Not every religious dictate, when ignored, results in irrevocable consequences for the believer, particularly where the individual is not responsible for the omission.[13] Moreover, some religious activities are more important to the believer than others, and many are not duties at all, but amount to personal preferences. Conversely, many individuals who assert other constitutional rights do so based on principle and perceived duty, and not simply as a preference.

There are inevitable problems with any ranking of constitutional rights. Is the denial of free exercise for a week more or less serious than the denial of free speech for a lifetime? Is the denial of a "central" free speech right more or less serious than the denial of a "peripheral" free exercise right? In short, the correlation between religious activities and certain qualities that make lesser deference appear appropriate is too tenuous and too inconsistent to justify a constitutional distinction from other First Amendment activities. Cf. *Prince* v. *Massachusetts*, 321 U.S. at 164-165.

The most significant similarity between religious freedom and other freedoms in the prison context, and the most pressing reason for not applying a different standard to free exercise claims, is that free exercise can raise

[13] See *In re President & Directors of Georgetown College, Inc.*, 331 F.2d 1000, 1006-1007, 1009 (D.C. Cir. 1964) (court order of blood transfusion for Jehovah's Witness was not considered by the adherents to be their responsibility nor, therefore, to be a violation of their religious tenets).

security and administrative concerns indistinguishable from those raised in the case of other rights. Cf. *Bell* v. *Wolfish*, 441 U.S. at 546 n.28. The fact that religious exercise often does not raise security concerns is of little comfort to prison administrators facing a free exercise claim that does. In this area as well, then, the inmate must give up those rights that are inconsistent with his status as a prisoner "or with the legitimate penological objectives of the corrections system" (*Pell* v. *Procunier*, 417 U.S. at 822).[14]

3. Adopting a free exercise standard more onerous than "reasonable relationship" creates the same problems that this Court has warned against in the context of other constitutional claims, and it presents additional problems as well. The standard adopted by the court of appeals, which requires prison officials to demonstrate that there is "no reasonable method" to accommodate inmates' religious interests, would create particularly grave difficulties for prison administrators.[15]

[14] The Court has recognized that other important interests also must give way in the face of the needs of prison security. See *Block* v. *Rutherford*, 468 U.S. 576, 578, 589 (1984) (ban on contact visits upheld where "responsible, experienced administrators have determined, in their sound discretion, that such visits will jeopardize the security of the facility" even though "the ability of a man to embrace his wife and his children from time to time * * * is a matter of great importance to him"); *Hudson* v. *Palmer*, 468 U.S. 517, 530 (1984) (denying prisoners any Fourth Amendment right of privacy in their prison cells); *Bell* v. *Wolfish*, 441 U.S. at 558-560 (upholding body cavity searches in detention facilities).

[15] We agree with petitioners that the court of appeals' standard amounts to a "least restrictive alternative" requirement or some close relative of that standard. The court appears to impose a burden on the prison officials to satisfy a court that there is no reasonable method to accommodate religious interests without creating demonstrable security problems. Whatever its intended meaning, the court of appeals' standard suffers from the principal fault of the "least restrictive alternative" standard—it makes the court, rather than the prison officials, the primary arbiter of what constitutes a reasonable accommodation to a religious claim. "Middle-

The security concerns and other penological interests are not reduced simply because it is a free exercise claim —rather than some other constitutional claim—that a prisoner is pressing. Nor does the religious nature of the claim reduce the need for deference to prison officials' judgment. Judges are no more expert and prison officials are no less experienced just because free exercise is the subject of the claim.[16] Moreover, as in the case of other constitutional claims, the choice is not simply between more or less liberty for the claimant prisoner: it is between more liberty for him and less liberty and less safety for everyone else, guards and other prisoners alike. And, as in the present case, there is often an additional twist: the cost of "accommodation" is not only to the claimant's rehabilitation, but to the rehabilitation of other prisoners as well.

The standard adopted by the court of appeals would seriously jeopardize the day-to-day decisionmaking and risk-assessment necessary to running a prison. Uniquely inflexible, the standard would handcuff prison officials in

level" scrutiny of any sort would provoke litigation, invite prisoners to recast their claims in free exercise form, and doubtless be taken by some courts as a license for second-guessing of the kind that this Court has sought to discourage in the prison setting.

[16] This Court addressed a free exercise claim recently in a context that is instructive here. In *Goldman* v. *Weinberger*, No. 84-1097 (Mar. 25, 1986), the Court rejected a Jewish serviceman's claim that the Free Exercise Clause required the Air Force to allow him to wear a yarmulke while in uniform despite a regulation mandating uniform dress. Unpersuaded that the regulation as applied to petitioner's religiously motivated conduct should be analyzed under the strict scrutiny standard, the Court deferred to the "considered professional judgment of the Air Force" that uniformity is necessary to ensure that individuals subordinate personal identities "in favor of the overall group mission" (slip op. 5). Surely, the standard applied to a free exercise claim raised by a prisoner should not involve less deference to the professional judgment of prison administrators than the Court accorded to military officials in *Goldman*.

their attempts to forestall threats to security in advance, by eroding their ability to anticipate problems and implement innovative solutions. *Prisoners' Union*, 433 U.S. at 132-133; *Bell* v. *Wolfish*, 441 U.S. at 551 n.32. The fear of lawsuits and damage awards would further distort the decisionmaking process. The rule would impose on defendant officials the impossible task of setting up and then shooting down every conceivable alternative means of accommodation, never eliminating the possibility that a court somewhere would conclude that there is a better way to run the prison, for it is only the "unimaginative" judge who "could not come up with something a little less 'drastic' or a little less 'restrictive' in almost any situation * * *." *Illinois Elections Board* v. *Socialist Workers Party*, 400 U.S. 173, 188 (1979) (Blackmun, J., concurring).[17]

There are two additional and related problems with encouraging free exercise claims by affording them stricter scrutiny than other constitutional claims. First, if the courts "act as the front-line agencies for the consideration and resolution of the infinite variety of prisoner complaints * * *, the capacity of our criminal justice system

[17] Several courts have employed one permutation or other of the standard adopted by the court below with unquestionably undesirable results. For example, in *Dettmer* v. *Landon*, 799 F.2d 929 (4th Cir. 1986), the court of appeals reversed the district court's application of the least restrictive alternative test. The district court had ordered the Virginia Department of Corrections to allow an inmate to possess, inter alia, candles and incense for witchcraft rites, which the inmate had learned through a correspondence course. The district court had concluded that notwithstanding the fact that candles could be used as timing devices and to make keys, and that incense could be used to disguise the odor of marijuana, the prohibition of those items was not the least restrictive alternative, so long as the State could store the items while the prisoner was not using them and could supervise him while he was. In reversing, the court of appeals deferred to the prison officials' concern that inmates' possession of candles and incense posed security risks, and that individual surveillance was unduly burdensome, especially if other prisoners sought similar exceptions.

to deal fairly and fully with legitimate claims will be impaired by a burgeoning increase of frivolous prisoner complaints." *Procunier* v. *Martinez*, 416 U.S. 396, 405 n.9 (1974). See also Cripe, *Religious Freedom in Prisons*, 41 Fed. Prob. 31, 31-32 (1977). This concern is particularly important in the free exercise context, in light of the scope and variety of claims based on that clause.

Second, if the courts use a special standard for claims brought under the Free Exercise Clause, many prisoner complaints will be recast as free exercise claims, and this Court's efforts to restrain courts' interference with the administration of prisons will be undercut. Challenges to regulations concerning hair length, contact visits, and the practice of frisks of male prisoners by female guards, for instance, all have been made as both religious and nonreligious constitutional claims.[18] Claims regarding group associations and meetings, dress, diet, reading materials, speech, and even sexual orientation can easily be couched as free exercise claims. Given the creativity of prison claimants, the other possibilities are endless. See *Abdool-Rashad* v. *Seiter*, No. 84-3816 (6th Cir. Aug. 8, 1985) (unpublished opinion) (prisoner asserts religious "right to determine the length of his hair and * * * to use certain implements in his religious observances, namely, fighting sticks or 'nunchucks' ").

Creating a special standard for religious claims may lead to abuses such as inducing inmates to "convert" to a particular religion in order to benefit from the privileges extended to members of that religious group. The creation of constitutionally compelled accommodations to

[18] Compare *Weaver* v. *Jago*, 675 F.2d 116 (6th Cir. 1982) (hair length—religious and nonreligious claims), with *Cole* v. *Flick*, 758 F.2d 124 (3d Cir. 1985), cert. denied, No. 85-5317 (Oct. 21, 1985) (hair length—religious claim); compare *Polakoff* v. *Henderson*, 370 F. Supp. 690 (N.D. Ga. 1973) (conjugal visit—religious claim), with *Block* v. *Rutherford*, *supra* (contact visit—nonreligious claim); compare *Madyun* v. *Franzen*, 704 F.2d 954 (7th Cir. 1983) (religious objection to frisk by female guard), cert. denied, 464 U.S. 996 (1983), with *Smith* v. *Fairman*, 678 F.2d 52 (7th Cir. 1982) (nonreligious objection to same).

religion may even result in the creation of "new" religions, the chief purpose of which is to cloak inmate demands under the protective mantle of a claimed religious practice.[19] In the prison context, it is inevitable that inmates will be willing to manufacture religious tenets as a tool to gain favored treatment. Although prison officials can attempt to address that problem by distinguishing between valid and bogus religious claims, that is an endeavor that is fraught with risks and guaranteed to provoke litigation.[20]

[19] Cf. Cripe, *Religious Freedom in Prisons*, *supra*, 41 Fed. Prob. at 34 ("The Church of the New Song (CONS) was organized and its teachings were written primarily by a Federal inmate. * * * Despite the founder's admission that it was started as a game, the District Court [in *Theriault* v. *Carlson*, 339 F. Supp. 375 (N.D. Ga. 1972), rev'd, 495 F.2d 390 (5th Cir. 1974)] found the tenets of CONS sufficient to qualify it for first amendment protection."); *Remmers* v. *Brewer*, 361 F. Supp. 537 (S.D. Iowa 1973), aff'd, 494 F.2d 1277 (8th Cir.), cert. denied, 419 U.S. 1012 (1974) (also concluding that CONS was a religious entity). The interesting and instructive CONS movement is also discussed in Knight, *Religion in Prison: Balancing the Free Exercise, No Establishment, and Equal Protection Clauses*, 26 J. Church & State 437, 440-443 (1984).

[20] Nothing in *Cruz* v. *Beto*, 405 U.S. 319 (1972), requires the Court to adopt a "strict scrutiny" standard for free exercise claims. In that case, the complaint alleged that the prision officials refused to permit Cruz, a Buddhist, to use the prison chapel for his religious exercises. The Court held that Cruz would be entitled to relief if he could show that he was denied "a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts" (*id.* at 322). The Court's opinion did not suggest that Cruz's claim would have prevailed if it had conflicted with a policy designed in good faith to promote prison security or other penological goals. Indeed, the Court specifically noted that the Constitution did not require that special places of worship or ministers be provided for members of every religious sect or group within a prison; it is sufficient, the Court held, that "reasonable opportunities" be afforded to all persons to practice their religion "without fear of penalty" (*id.* at 322 n.2).

4. The reasonable relationship standard does not exclude consideration of the factors unique to the practice of religion, nor is it a standard without teeth. It accommodates both legitimate correctional goals and bona fide religious practices that are not inconsistent with those goals.[21]

Under the reasonable relationship standard, an inmate will prevail if the prison fails to show that a particular policy having the effect of restricting religious practices is reasonably related to a legitimate penological interest. In a case where an important free exercise right is completely abrogated and the claimant has pointed to obvious, easy alternatives to the challenged policy, a court may consider that as evidence that the policy is not reasonable, but is an "exaggerated * * * response" (*Pell* v. *Procunier*, 417 U.S. at 827; *Prisoners' Union*, 433 U.S. at 128). By the same token, the absence of ready alternatives is evidence of the reasonableness of the policy (see *Block* v. *Rutherford*, 468 U.S. at 587).[22]

A limited review of available alternatives is particularly appropriate with respect to inmates' free exercise claims, because those claims tend to arise not from prison policies aimed at prohibiting the free exercise of religion, but from necessarily broad prison rules that have the indirect effect of prohibiting an individual from practicing his religion. We again stress, however, that courts must

[21] For instance, the more private a practice, see pages 17-18, *supra*, the more plausible is a claim that its abrogation is not reasonably related to a legitimate penological objective.

[22] The Court has made it clear, however, that the existence of an alternative to the policy selected will not by itself establish that the policy constitutes an exaggerated response to the problem in question. See *Block* v. *Rutherford*, 468 U.S. at 580-581; *Bell* v. *Wolfish*, 441 U.S. at 542-543 n.25; cf. *Ansonia Bd. of Educ.* v. *Philbrook*, No. 85-495 (Nov. 17, 1986) (under Title VII, an employer need offer only a reasonable accommodation to the religious practices of an employee, even if it is not the accommodation the employee requested).

defer to the informed judgments of prison officials concerning whether it is reasonable for prison officials to reject any particular accommodation proposed by an inmate. Prison officials should not be required to adopt a particular alternative that, upon consideration and based upon their professional judgment, would impose more than a de minimis cost on their pursuit of valid penological interests,[23] in the absence of substantial evidence in the record to the contrary. See *Pell* v. *Procunier*, 417 U.S. at 827.

Our view that the reasonable relationship standard can provide protection for prisoners' legitimate religious interests is not theoretical, for prisoners have prevailed under that standard in the courts.[24] In *Barrett* v. *Virginia*, 689 F.2d 498 (4th Cir. 1982), for example, the court of appeals sustained an inmate's challenge to a statute that barred prisoners from petitioning to change their names. The inmate, who converted to the Muslim

[23] Cf. *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 84 (1977) (religious accommodation under Title VII causes "undue hardship" whenever that accommodation results in "more than a *de minimis* cost" to the employer).

[24] The feasibility of this approach is further suggested by the fact that some version of it has been widely—if rather inconsistently—adopted by the courts of appeals. Prior to the decision in this case, the Third Circuit had used essentially the standard we advocate. *St. Claire* v. *Cuyler*, 634 F.2d 109 (1980). Other courts have as well. See *Hill* v. *Blackwell*, 774 F.2d 338 (8th Cir. 1985) (adopting *St. Claire* standard) (but cf. *Safley* v. *Turner*, 777 F.2d 1307 (8th Cir. 1985), cert. granted, No. 85-1384 (May 27, 1986)); *Madyun* v. *Franzen*, 704 F.2d 954 (7th Cir. 1983), cert. denied, 464 U.S. 996 (1983); *Jones* v. *Bradley*, 590 F.2d 294 (9th Cir. 1979); *Barrett* v. *Virginia*, 689 F.2d 498 (4th Cir. 1982) (but cf. *Gallahan* v. *Hollyfield*, 670 F.2d 1345 (4th Cir. 1982)); *Smith* v. *Coughlin*, 748 F.2d 783 (2d Cir. 1984) (but cf. *Abdul Wali* v. *Coughlin*, 754 F.2d 1015 (2d Cir. 1985); *Burgin* v. *Henderson*, 536 F.2d 501 (2d Cir. 1976)); *Walker* v. *Mintzes*, 771 F.2d 920 (6th Cir. 1985); *Abdullah* v. *Kinnison*, 769 F.2d 345, 349-351 (6th Cir. 1985); cf. *Thorne* v. *Jones*, 765 F.2d 1270, 1274-1275 (5th Cir. 1985), cert. denied, No. 85-1070 (Feb. 24, 1986).

faith while in prison, twice attempted to adopt an Islamic name in conformance with the teachings of his religion. The court concluded that the State's "categorical refusal * * * to accord legal recognition to religious names adopted by incarcerated persons" was not "reasonably and substantially justified by considerations of prison discipline and order" (689 F.2d at 503). Similarly, in *Green* v. *Ferrell*, 801 F.2d 765, 772 (5th Cir. 1986), and *Mann* v. *Smith*, 796 F.2d 79, 82 (5th Cir. 1986), the Fifth Circuit this year has struck down prison prohibitions on newspapers and magazines as an "exaggerated response" to security concerns. See also *Kincaid* v. *Rusk*, 670 F.2d 737, 744-745 (7th Cir. 1982) (prison failed to establish rational relationship between rules prohibiting certain types of reading materials and valid security interest); *Boudin* v. *Thomas*, 533 F. Supp. 786, 790-791 (S.D.N.Y. 1982) (segregated confinement of prisoner an "exaggerated response").[25]

The application of the rational basis standard in the equal protection context likewise demonstrates that the standard is not without substance. In resolving equal protection challenges, this Court has struck down legislation under the rational basis standard where the relationship between a classification and the asserted goal "is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne* v. *Cleburne Living Center, Inc.*, No. 84-468 (July 1, 1985), slip op. 13. This Court's cases demonstrate that the burden under the rational basis test has not proved impossible to satisfy. See *Zobel* v. *Williams*, 457 U.S. 55, 61-63 (1982); *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528, 535 (1973).

---

[25] We do not necessarily endorse the result in each of these cases, and the precise formulation of the standard used in these opinions is not always clear, but we think it indisputable that the courts found the prison practice at issue not to be reasonably related to a legitimate penological interest.

5. Finally, and to a much greater extent than in the case of other rights, a prisoner with a religious claim may find protection under other legal theories and for practical reasons as well. The Equal Protection Clause of the Fourteenth Amendment offers one source of protection,[26] the Free Exercise Clause protects against punishing inmates for their religious beliefs (see *Cooper* v. *Pate*, 378 U.S. 546 (1964)), and the Eighth Amendment is available as a check in extreme cases (see *Hudson* v. *Palmer*, 468 U.S. at 530). In addition, prison officials will typically have an incentive to accommodate religious practices to the extent possible, because religion often furthers security and rehabilitative objectives. Officials will have no desire to provoke needless confrontations by denying emotionally felt needs and deeply held beliefs unless they have a good reason for doing so, or unless they determine that the needs and beliefs are not genuine. And it is widely acknowledged that religious practice can encourage rehabilitation and good behavior on the part of inmates, as the authorities collected by respondents indicate (Br. in Opp. 30-32; cf. Tr. 212). Beyond that, "[w]e are a religious people" (*Zorach* v. *Clauson*, 343 U.S. 306, 313 (1952)), and prison officials and state legislators (as well as their noninmate constituents) are likely to have sympathy for inmates' religious needs. While inmates may be a truly discrete and insular minority, their desire for the freedom to practice religion is a value that is widely shared and is likely to have a sympathetic reception from the officials who make prison policy. That is true in this case, and it is true in the federal prison system as well (see Appendix, *infra*, 1a-5a).

---

[26] The claim raised in *Cruz* v. *Beto*, *supra*, appears to have been based largely on equal protection grounds, since the prisoner's complaint was that he was not permitted to use facilities that were made available to members of more conventional religions.

C. Petitioners' Policies Are Reasonably Related To Legitimate Penological Objectives

The record in this case amply demonstrates that the "no return" policy for inmates working outside the Leesburg prison was reasonably related to legitimate penological objectives.[27] The testimony shows that Standard 853 was promulgated to further the goals of security, order, and rehabilitation. Officials testified that Standard 853 was designed "to relieve prison tensions stemming from overcrowding and to provide a structured rehabilitative program" (Pet. App. 25A). Requiring all inmates to pass through gang minimum classification relieved the pressures in the prison during the work week and provided rehabilitative opportunities to the prisoners. Earlier problems resulting from inmates moving from maximum security directly to full minimum were alleviated by the new procedure, and there were fewer escapes by inmates from minimum security as a result. See pages 3-4, *supra*.

The no return policy developed following numerous problems implicating security, administration, and rehabilitation. As the problems mounted, the administrators finally concluded that the only way to solve them was to allow no returns during the day except in case of emergency. Problems resulting from returns included congestion at the receiving gate, burdens on the guards because of the additional inmate processing procedures, and an increased risk of escape during the mass movement of inmates to lunch. In addition, the midday re-

---

[27] There also was no evidence of an equal protection violation here. The record shows that, with one exception, religion is not considered in classification and job decisions. Instead the classification committee considers the needs of the institution and whether the inmate "would fit into his job" (Tr. 138). Only as to the three jobs in the piggery does the prison administrator make a limited exception by excusing Muslims from working there (Tr. 172). The no return policy was not aimed at the Muslims, and it is applicable to everyone. Thus, for example, Catholics are not allowed to return to the prison on Good Friday. Tr. 112; see also Tr. 142, 191-193.

turns compromised efforts to rehabilitate inmates, because the returns wasted much of the productive day not only for the returning inmates, but for other members of their work details as well. Finally, permitting returns led to arguments and confrontations between inmates and guards. These are legitimate, pressing concerns, and respondents did not show that petitioners' fears were groundless or their response exaggerated. See pages 4-6, *supra*; Pet. App. 28A-31A.

Finally, the prison officials gave convincing and substantially unrebutted testimony that there was no adequate alternative to the no return policy. In the judgment of the prison officials, creating a special detail of Muslim workers was not an adequate alternative, nor were the other proposed means of accommodating the plaintiffs' desire to attend Jumu'ah, such as scheduling work details on the weekends or permitting Muslim inmates to remain in the prison on Fridays. The evidence showed that each of the proposed alternatives would lead to further security and administrative problems. See pages 6-7, *supra*.

The reasonableness of the challenged prison regulations also was suggested by their history. As we noted above, the regulations were designed to deal with specific problems and were carefully thought out. In fact, officials even discussed the possible effects of the no return policy with the Imam and consulted Muslim religious texts; only after weighing the benefits to the prison against the infringement on the free exercise of religion did the prison authorities conclude that the no return policy should prevail. See page 6, *supra*.

Finally, Leesburg has made consistent efforts to accommodate Muslims and provide alternative avenues for worship consistent with their faith. The state-paid Imam may come to the institution at any time, and, outside the work day, the inmates are free to congregate and consult with him. Ramadan is recognized by the administrators, who also see that the Muslims do not have to eat

religiously offensive foods or work in the piggery. See pages 7 and 28 n. 27 *supra*. On this record, it seems clear that the Leesburg officials worked hard to accommodate the competing interests in a reasonable fashion. Their expert judgment in that regard deserves deference from the courts.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

CHARLES FRIED
Solicitor General

WILLIAM F. WELD
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

ROGER CLEGG
Assistant to the Solicitor General

RANGELEY WALLACE
Attorney

DECEMBER 1986

APPENDIX

Bureau of Prisons Regulations and Practices Regarding Inmate Religious Practices

The federal Bureau of Prisons budgeted $4,214,000 for "religious programs" in Fiscal Year 1986. There are 86 salaried chaplains at the Bureau's 47 institutions, representing the Protestant, Catholic, Jewish, and Islamic faiths, and more than 2500 religious volunteers. The volunteers have been "certified" by the Bureau—that is, they have been given institutional training and annual training updates. They cover, in addition to the major religious denominations, Native American religions, Buddhism, Hinduism, and other less common denominations. Religious activities are conducted within the institution and in the community. Within the institution there are structured programs of worship and a variety of other activities as well: discussion groups, spiritual growth seminars, Bible and Qur'an discussions taught in English and Spanish, retreats within the prison, and in a few places instruction in Greek, Arabic, and Hebrew related to Bible studies. Special holiday celebrations include the Seder meal at Passover, Christmas dinner, and Id El Fitr' (meal at the end of Ramadan). There are—in addition to the Jumu'ah prayer—pow-wows (family-oriented, traditional Indian gatherings of both a social and religious nature), drum ceremonies (a Native American prayer service), and sweat lodges (an Indian "purification" service). Religious garb—including yarmulkes, kufis, fezzes, prayer shawls, phylacteries, various religious medals—is permitted during devotional services, and in some cases may be worn generally in the inmate population; in some prisons, prayer rugs are also allowed. Community activities include retreats outside the prison, and community service performed under the supervision of such groups as the Prison Fellowship. Finally, the Bureau has for the past three years run an experimental

program designed to accommodate the religion-based dietary restrictions of its prisoners. The program involves 12 distinct religions, 1494 inmates, 39 institutions, and substantial expense (the average meal under the program is $1.09 more expensive than a standard meal). At all prisons, foods containing pork or pork derivatives are marked on the menu with an asterisk, and meals during Ramadan are served to Muslim inmates before sunup and after sundown.

The Bureau of Prisons regulations governing the religious beliefs and practices of inmates are found in 28 C.F.R. Part 548, and provide as follows:

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons provides inmates of all religious faiths with reasonable and equitable opportunities to pursue individual religious beliefs and practices, within the constraints of budgetary limitations and the security and orderly running of the institution and the Bureau of Prisons.

(b) When it is considered necessary for the security or good order of the institution, the Warden may limit attendance at or discontinue completely a religious activity. The Warden may not restrict nor allow the religious group itself to restrict attendance at or participation in a religious activity on the basis of race, color, nationality, or (ordinarily) creed. The Warden, after consulting with the institution chaplain, may limit participation in a religious group when the nature of the religious activity (*e.g.*, a ceremonial meal) suggests a need for this limitation.

(c) The Bureau of Prisons rule on religious beliefs and practices does not require an inmate to profess a religious belief. An inmate may designate any or no religious preference. An inmate may change this designation at any time.

§ 548.11 Definition.

For purposes of this rule, the term "religious activity" includes religious diets, services, ceremonies, and meetings.

§ 548.12 Procedures.

(a) Institution chaplains are available upon request to provide pastoral care and counseling.

(b) Under the general supervision of the Warden, institution chaplains shall schedule and coordinate the institution's religious activities. If an institution has no staff chaplain, a staff member designated by the Warden shall exercise the authority of the chaplain under this paragraph (b).

(c) Institution staff may contract with representatives of faith groups in the community and are encouraged to accept the services of volunteers to assist inmates in the pursuit of their religious beliefs.

(d) No one may disparage the religious beliefs of an inmate, nor coerce or harass an inmate to change religious affiliation.

(e) Attendance at all religious activities is voluntary.

(f) An inmate ordinarily shall be allowed to wear or use personal religious items during devotional services. Upon request of the inmate, the Warden may also allow an inmate to wear or use personal religious items within the institution. The Warden's decision on whether an inmate may wear or use personal religious items during devotional services and/or within the institution shall be based on considerations of security, safety, and good order. If the Warden determines that wearing or using the religious items within the institution would violate considerations of security, safety, or good order, the Warden may nonetheless permit the inmate to wear or use the religious items during devotional services.

The Warden may request the institution chaplain to obtain a determination from representatives of the inmate's faith group and/or other appropriate sources concerning the religious significance of the items.

(g) Each inmate who wishes to have religious books, publications, or materials must comply with the general rules of the institution regarding ordering, purchasing, retaining and accumulating personal property. Literature, publications or books about religious teaching are permitted in accordance with the procedures governing incoming publications [28 C.F.R. Pt. 540].

§ 548.13 Diet

(a) An inmate who wishes to observe religious dietary laws will be provided a diet which meets or exceeds recommended daily allowances established by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, and which complies with religious dietary laws to the extent practicable within the constraints of budget limitations and the security and orderly running of the institution and the Bureau of Prisons.

(b) As a once-a-year accommodation, staff may make arrangements with an inmate religious group to have a ceremonial meal. If the inmates representing the organization request, staff may purchase from a food supplier specially prepared food items which meet religious requirements. The inmate religious group is to include with its request, information on the religious significance of the items. The Warden may request the institution chaplain to obtain a determination from representatives of the inmate's faith group and/or other appropriate sources on the religious significance of the items. Funds for the purchase of special food items may be provided from:

(1) Funds from the chaplain's budget; or

(2) Funds provided by community organizations.

§ 548.14 Institution Work Assignment

Except where necessary for maintaining security, safety, and good order in the institution, an inmate may not be given a work assignment which violates the specific requirements of that inmate's religious faith. The inmate must initiate the request for a different work assignment.

§ 548.15 Scheduling to observe religious holidays, celebrations, and activities.

(a) Consistent with maintaining security, safety, and good order in the institution, the Warden shall endeavor to facilitate the observance of important religious holidays or celebrations in accordance with specific requirements of a faith group, such as fasting, worship, diet, or work proscription. The inmate must initiate request for observance of a religious holiday or celebration, and must specify in this request the nature of the observance and the particular accommodation requested. The Warden may request the institution chaplain to verify the specified religious requirements with representatives of the inmate's faith group and/or other appropriate sources. Consistent with maintaining security, safety, and good order in the institution, the Warden is ordinarily to allow an inmate to take non-consecutive vacation days, or to make-up for missed work, or to change work assignments in order to facilitate the inmate's observance of a religious holiday or celebration.

(b) The Warden may relieve an inmate from an institution program or assignment if a religious activity is also scheduled at that time.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1986 181483 40140